

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

M.A.C.M.A.Nos.1268 and 1387 of 2005 and 2202 OF 2013

COMMON JUDGMENT:

Since the issue involved in all these appeals is one and the same, they are being disposed of by this common judgment.

2. M.A.C.M.A.Nos.1268 and 1387 of 2005 are filed under Section 173 of the Motor Vehicles Act, 1988, by the appellant-United India Insurance Company, aggrieved by the grant of compensation of Rs.50,000/- to respondent No.1-claimant in O.P.No.1731 of 2000 as against a claim of Rs.51,500/-; and grant of compensation of Rs.92,500/- to respondents 1 and 2 - claimants as against the claim of Rs.2,00,000/-, in O.P.No.1730 of 2000 by the Chairman, Motor Accident Claims Tribunal-cum-V Additional District Judge, City Civil Court, Hyderabad,(the Tribunal', for brevity) vide orders, dated 07.12.2004, passed in said O.Ps.

3. Aggrieved by the grant of compensation of Rs.92,500/- as against the claim of Rs.2,00,000/- awarded by the Tribunal vide order, dated 07.12.2004, passed in O.P.No.1730 of 2000, the appellants-claimants preferred M.A.C.M.A.No.2202 of 2013 under Section 173 of the Act seeking enhancement of compensation.

4. Heard the submissions of both sides. Though the owner of the vehicle is served with notice, there is no representation on his behalf.

5. The parties are hereinafter referred to as they are arrayed in O.P.No.1730 of 2000.

6. The facts of the case are that claimant No.1 is wife, claimant No.2 is minor son and respondents 1 and 2 are parents of the deceased Shaik Moulana, who died in a road accident along with her minor daughter Shabana, who also travelled along with the deceased on 08.08.1999. On the date of accident i.e., on 08.08.1999, the deceased persons (Shaik Moulana and Shabana) boarded lorry bearing No.AP-03-T-9918 to go to Hyderabad from Kadiri and the said lorry dashed against the stationed lorry bearing No.AAQ-9171, due to rash and negligent driving of driver of said lorry as a result, the deceased persons fell down from the lorry, received severe injuries and died on the spot. A case in Crime No.73 of 1999 under Sections 304-A and 337 IPC was registered against the driver of lorry bearing No.AP-03-T-9918. The deceased Shaik Moulana used to earn Rs. 2,500/- per month by doing coconut business. Due to sudden death, the claimants are put to irreparable loss.

7. Learned Standing Counsel for the appellant-United India Insurance Company in M.A.C.M.A.Nos.1268 and 1387 of 2005 submits that the Tribunal had erroneously fixed the liability against the insurance company; that the deceased were gratuitous passengers travelling in the offending lorry bearing No.AP-03-T-9918; that there is no insurance covering the risk of passengers travelling in a goods vehicle and ultimately prayed to set aside the impugned orders.

8. On the other hand, learned counsel for the appellants-claimants in M.A.C.M.A.No.2202 of 2013 would submit that the Tribunal rightly passed the order in granting compensation; that in the first instance, the insurance company has to comply the impugned order and later recover the same from the owner of the offending lorry and ultimately prayed to dismiss the appeal filed by the insurance company. He further submits that the compensation granted by the Tribunal in O.P.No.1730 of 2000 is meagre and hence, prays to enhance the same.

9. It is not the case of the claimants that the deceased were not travelling in a goods vehicle at the time of accident. The Tribunal while dealing with this issue had elaborately analysed the entire evidence on record and concluded that the deceased were gratuitous passengers travelling in a goods vehicle. To reach the above conclusion, the Tribunal had assigned valid reasons. Therefore, it can be held that the deceased were gratuitous passengers travelling in a goods vehicle. There is nothing to take a different view.

10. It is apt to refer to the decision of the Hon'ble Supreme Court in **New India Assurance Company Limited v. Asha Rani and others¹**, where the deceased travelled in a goods vehicle and the Hon'ble Supreme Court held that the insurer of the offending vehicle is not liable to pay any compensation to the claimants.

11. Since the deceased were gratuitous passengers travelling in the offending lorry, there is no coverage of their risk under Ex.B.1-copy of the insurance policy. Under these circumstances, the

¹ 2003(2) SCC 223

Tribunal ought not to have directed the appellant-insurance company to satisfy the order at the first instance and recover the same from the owner of offending lorry. Hence, the impugned orders in M.A.C.M.A.Nos.1268 and 1387 of 2005 are liable to be set aside insofar as appellant-insurance company is concerned.

12. With regard to quantum of compensation in M.A.C.M.A.No.2202 of 2013, the Tribunal after considering evidence on record and taking the income of the deceased, rightly granted compensation of Rs.92,500/-, which is just and reasonable and there are no grounds to enhance the same.

13. Accordingly, M.A.C.M.A.Nos.1268 and 1387 of 2005 are allowed setting aside the orders, dated 07.12.2004, in O.P.Nos.1730 and 1731 of 2000 passed by the Motor Accident Claims Tribunal-cum-V Additional Chief Judge, City Civil Court, Hyderabad, only to the extent of fastening liability on the insurance company. The claimants are at liberty to recover the amount from the owner of the offending lorry. M.A.C.M.A.No.2202 of 2013 filed by the appellants-claimants is dismissed.

Miscellaneous Petitions, if any, pending in these appeals shall stand closed. No order as to costs.

Dr. SHAMEEM AKTHER, J

JULY 11, 2018

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Date:11.07.2018

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